



## ***CLOSED CASE SUMMARY***

ISSUED DATE: JANUARY 27, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0210

### **Allegations of Misconduct & Director's Findings**

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.140 – Bias Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.125 Social Media 1. Employees Shall Not Post Speech That Negatively Impacts the Department's Ability to Serve the Public	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

***This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.***

### **EXECUTIVE SUMMARY:**

The Complainant alleged that the Named Employee made a comment on social media that was biased and unprofessional.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegation #1**

#### ***5.140 – Bias Free Policing 2. Officers Will Not Engage in Bias-Based Policing***

This case concerns a comment made on social media by Named Employee #1 (NE#1). The Complainant referred the social media post in question to OPA and alleged that it constituted homophobia and was improper. The Complainant wrote in his emailed complaint:

I think his remarks were very homophobic, especially for an officer who may be responsible for serving people in Capitol Hill, Seattle's most LGBTQ-centric neighborhood. As a member of the LGBTQ community, and having been the victim of hateful comments and threats while on Capitol Hill, it is terrifying to think that those who we may need to turn to for protection have this type of view towards us. How can this community trust [NE#1] to be there for us?

OPA commenced this investigation. OPA reviewed the social media posts and determined that a community member made a post concerning COVID-19 and asked whether people would be held criminally liable if they intentionally spit on another person and caused the illness to transmit. The poster further wrote: "Remember when



people were spitting on cops to give them AIDS?” In response, NE#1 posted: “Those with AIDS still spit on my officers on the ‘Hill.’”

OPA attempted to interview the Complainant concerning his complaint but was ultimately unable to do so. OPA interviewed NE#1. He acknowledged making the post in question but denied that it was biased or unprofessional. NE#1 stated that he worked in Capitol Hill at the East Precinct. He explained that, in late 2019, an individual with AIDS spit on one of his officers. He said that this was what he was referring to in his post. He told OPA that he did not refer to homosexuals but simply to a person who had AIDS. He noted that AIDS was not specific to just one group of people or one sexual orientation.

SPD policy prohibits biased policing, which it defines as “the different treatment of any person by officers motivated by any characteristic of protected classes under state, federal, and local laws as well other discernible personal characteristics of an individual.” (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

Based on OPA’s review of the terminology that NE#1 used, OPA does not believe that it constituted biased policing. As NE#1 explained, he did not refer to any individual sexual orientation. Moreover, as he also indicated, he was stating something that was a fact, not casting aspersions on or vilifying any protected class. While the Complainant may have taken this statement as an affront to the LGBTQ+ community and while OPA does not seek to minimize the Complainant’s articulated concerns, the plain language of the statement does not support a finding of bias. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

#### **Named Employee #1 - Allegation #2**

##### ***5.125 Social Media 1. Employees Shall Not Post Speech That Negatively Impacts the Department’s Ability to Serve the Public***

SPD Policy 5.125-POL-1 states that officers shall not post speech on social media that negatively impacts the Department’s ability to serve the public. Similarly, SPD Policy 5.001-POL-10, which governs officer professionalism, prohibits “behavior that undermines public trust in the Department, the officer, or other officers.”

Again, when looking at the plain language of the post, OPA interprets it to be making an assertion of fact, not seeking to disparage or discriminate. In reaching this finding, OPA notes that NE#1 has no prior history of making unprofessional or insensitive comments, whether in-person or on social media. While not dispositive in and of itself, this is evidence that supports OPA’s adoption of NE#1’s account of his actions.

Accordingly, OPA recommends that both this allegation and Allegation #3 be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**

#### **Named Employee #1 - Allegation #3**

##### ***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***



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For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained (Unfounded)**